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16 and Franklin Resources, Inc.

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**

20 ANTHONY P. MIELE III,

21 Plaintiff,

22 v.

23 CHARLES B. JOHNSON and FRANKLIN  
24 RESOURCES, INC.,

25 Defendants.

Case No. 3:15-cv-00199-LB

**INITIAL JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED]  
ORDER**

Date: July 23, 2015

Time: 9:30 a.m.

Courtroom: C, 15<sup>th</sup> Floor

Judge: Hon. Laurel Beeler

1 The parties to the above-entitled action jointly submit this Initial Joint Case Management  
 2 Statement & Proposed Order pursuant to the Standing Order for All Judges of the Northern  
 3 District of California dated November 1, 2014 and Civil Local Rule 16-9.

4 **1. Jurisdiction & Service**

5 This Court has subject matter jurisdiction in this action under 28 U.S.C. § 1332(a)(1).  
 6 The amount in controversy exceeds \$75,000. Plaintiff Anthony P. Miele, III (“Plaintiff” or  
 7 “Miele III”) is a resident of the state of New York. Defendant Charles B. Johnson (“Johnson”) is  
 8 a resident of the state of Florida. Franklin Resources, Inc. (“Franklin”) is incorporated in  
 9 Delaware and maintains its principal place of business in San Mateo, California. There are no  
 10 issues regarding personal jurisdiction or venue. Defendant Johnson was served on January 21,  
 11 2015. Defendant Franklin was served on January 26, 2015.

12 **2. Facts**

13 **A. Plaintiff’s Position**

14 While Plaintiff has set out the facts in a more detailed manner in his Amended  
 15 Complaint, the following is a brief summary of the facts.

16 In the early 1970’s, Plaintiff’s father, Anthony P. Miele Jr. (“Miele Jr.”), provided  
 17 Defendant Johnson with a loan of \$100,000. Defendant Johnson was the Chief Executive  
 18 Officer and Chairman of the Board of Franklin for all relevant time periods. In 1973, Johnson  
 19 transferred 4,000 shares of common stock of Franklin to Miele Jr., which Miele Jr. held in the  
 20 name “Anthony P Miele Jr TTEE Anthony P Miele III.” In November 1974, Miele Jr. died when  
 21 Plaintiff was three years old. Miele Jr.’s estate was handled by the law firm McCarter &  
 22 English. Evelyn Miele had previously been employed by this firm, but had stopped working  
 23 there before marrying Miele Jr. in 1970. A successor trustee was not appointed for Miele III’s  
 24 Franklin shares.

25 In 1983, the address of record for these shares was 160 South Livingstone Avenue,  
 26 Livingston, New Jersey, the address of the law firm of Plaintiff’s uncle. In late 1983, this law  
 27 firm moved; the record address, however, remained the same. In 1989 and 1990, Franklin wrote  
 28 to The Bank of New York (“BoNY”), Franklin’s transfer agent, enclosing mail addressed to

1 Anthony P Miele Jr TTEE Anthony P Miele III at 160 South Livingston Avenue, which had been  
2 returned by the post. On March 4, 1991, BoNY wrote to Franklin, stating that BoNY held  
3 uncashed dividend checks from January 13, 1984 to January 15, 1991 totaling \$186,496.88, and  
4 stock certificates representing 128,125 shares. BoNY stated that the shareholder's total position  
5 was 140,625 shares.

6 According to Johnson, at some point in the late 1980's he learned this property was at  
7 risk of "escheating to the state." Johnson contacted Eugene Mulvihill. At this point, Mulvihill  
8 was a known criminal guilty of repeated financial fraud, and had no affiliation with Franklin.  
9 Johnson informed Mulvihill that Plaintiff's share certificates and uncashed dividend checks,  
10 worth millions, lay unclaimed at BoNY, and risked escheatment.

11 Neither Johnson nor anyone else ever notified Plaintiff about the existence of his shares  
12 and that they faced possible escheatment. Shortly thereafter, on October 17, 1991, BoNY  
13 informed Defendants that Plaintiff's shares were "released to someone" under "puzzl[ing]"  
14 circumstances that required further investigation. Defendants made no bona fide effort to inform  
15 Plaintiff that his shares were transferred out of BONY under these circumstances. At no point  
16 did Plaintiff authorize the transfer or release of any shares or dividends of Franklin Resources.  
17 The dividend payment address for these shares was later changed to F.N. Wolf & Co., a  
18 brokerage firm with strong ties to Mulvihill.

19 Plaintiff learned of the existence of these shares for the first time in summer of 2012,  
20 when his sister, Veronica Miele Beard, told Plaintiff that Johnson had communicated with Anson  
21 M. Beard, Jr., her father-in-law. In these communications, Johnson stated that he had transferred  
22 4,000 shares of Franklin Resources stock to Miele Jr. in approximately 1973, and that the stock  
23 plus dividends would be worth over \$200,000,000. Later, Plaintiff received a page of a Franklin  
24 stock ledger from March 1974 which Johnson had sent to Beard Jr., showing 4,000 shares in the  
25 name of "Anthony P. Miele, Jr. TTEE Anthony P. Miele, III." This was the first time Plaintiff  
26 ever learned that Franklin shares had been held in trust on his behalf. It was not until March and  
27 April of 2014 that Plaintiff received documents containing key information underpinning  
28

1 Plaintiff's claims from Franklin Resources and the New Jersey based law firm of McCarter &  
2 English.

3 While Defendants claim their position regarding the facts is based on documents authored  
4 by Plaintiff's counsel, Defendants' description of the facts contains several significant errors and  
5 misrepresentations of the facts. Defendants continue to cite a draft complaint which was  
6 provided for settlement purposes only, and contains information extraneous to the issues which  
7 has not been alleged.

### 8 **B. Defendants' Position**

9 The factual allegations set forth below are based on Plaintiff's Amended Complaint, the  
10 Draft Complaint provided by his counsel (but not filed), various declarations that he filed in  
11 opposition to Defendants' Motion to Dismiss, and matters from the public record.

12 In 1973, over forty years ago, Defendant Charles Johnson was seeking funds and turned  
13 to an acquaintance of his, Eugene Mulvihill. Mulvihill's firm, Mayflower Securities, had  
14 underwritten Franklin's initial public offering in 1971. Mulvihill introduced Johnson to Anthony  
15 P. Miele Jr. ("Miele Jr."), Mulvihill's long-time family friend. Johnson sold 4,000 shares of  
16 Franklin stock to Miele Jr., which were then allegedly registered in the name of his then-infant  
17 son, Plaintiff Anthony P. Miele III ("Plaintiff" or "Miele III").

18 Miele Jr. died in 1974. Following his death, and until at least 1983, the Franklin stock  
19 was continuously held by the Miele family's long-time attorneys, McCarter & English, LLP  
20 ("McCarter"), who administered Miele Jr.'s Estate along with Plaintiff's mother, Evelyn Miele,  
21 and his uncle, J.P. Miele.

22 In 1976, an "unknown individual" opened an account in the name of Miele Jr. as Trustee  
23 for Miele III with Bank of New York ("BoNY"), Franklin's transfer agent, using the address,  
24 160 South Livingston Avenue – the law firm address of J.P. Miele, Plaintiff's uncle, in  
25 Livingston, New Jersey.

26 In 1983, McCarter closed the Estate and sent the Franklin share certificate to Evelyn  
27 Miele. Mrs. Miele also happened to be employed at McCarter, and worked for the partner who  
28 administered her deceased husband's Estate. Notably, McCarter directed Mrs. Miele to keep the

1 account address current with Franklin, and “recommended leaving the registration unchanged  
2 until Miele III turned 14, when he could appoint his own custodian, or 18, when he could claim  
3 the stock himself.” Thus, in 1989, when Plaintiff turned 18, he had the ability to control his  
4 Franklin stock. Mrs. Miele returned an acknowledgement of receipt of the stock and the letter  
5 from McCarter instructing her on how to protect the shares.

6 Franklin or its then-transfer agent, BoNY, dutifully sent annual reports and proxy  
7 statements, paid dividends, and issued additional shares due to stock splits to the account on  
8 record, “160 South Livingston address,” i.e., the law firm address of J.P. Miele, Plaintiff’s uncle,  
9 in Livingston, New Jersey. Indeed, J.P. Miele did receive dividend checks and share certificates  
10 at this address which, according to Plaintiff, he either cashed or forwarded to the McCarter firm,  
11 on Plaintiff’s behalf. However, in 1983 or 1984, J.P.’s Miele’s law firm moved from its South  
12 Livingston address, without notice to Franklin.

13 At some point between 1986 and 1989, Plaintiff alleges that “Johnson received a report  
14 from BNY, and was told that the shares and dividends in the Miele account were going to be  
15 escheated to the State of New Jersey.” Johnson then called Mulvihill to help locate Miele Jr.  
16 (not knowing that he had passed away), as Mulvihill was a known close friend of Miele Jr. and  
17 “was present at [Johnson’s] sole meeting [with] Miele Jr.” When Johnson spoke with Mulvihill,  
18 he learned that Miele Jr. had died. Johnson then asked Mulvihill if he could help locate Plaintiff.  
19 It is this purported act – a single phone call, seeking help from Miele family’s long-time friend –  
20 that forms the crux of alleged liability in the Amended Complaint.

21 In 1990, Plaintiff, then 19 years old, met with Mulvihill. According to Plaintiff’s  
22 counsel, Mulvihill gave Plaintiff documents to sign and, in return of these signed documents,  
23 gave Plaintiff \$2 million. Plaintiff and his family members have submitted sworn declarations  
24 admitting that Mulvihill set up separate trusts for each of them, each with “\$250,000 or more.”  
25 Plaintiff does not describe why he received the money or what he thought it was for. Rather,  
26 Plaintiff claims that it wasn’t until later, in 2012, when he confronted Mulvihill and told him he  
27 was unaware of any Franklin stock, that Mulvihill replied, “the money I gave you in 1990.”  
28

1 Not coincidentally, in 1991, soon after his trust was funded by Mulvihill, Plaintiff alleges  
2 that his Franklin shares were released and transferred to unknown persons without his  
3 authorization. While Plaintiff never identifies who received his shares, the Amended Complaint  
4 alleges that at least some of the “shares and future dividends” were subsequently directed to “FN  
5 Wolf, the successor to the assets of Mayflower and First Jersey,” i.e., companies run by or  
6 affiliated with Mulvihill.

7 In 1992, when Plaintiff was 21, he received an audit letter from the IRS informing him of  
8 taxes owed on unreported stock dividends paid by Franklin. Plaintiff hired a tax accountant, was  
9 told the taxes needed to be paid, and paid the taxes. While Plaintiff now claims he didn’t read  
10 the IRS letter and didn’t realize why he was paying thousands of dollars of taxes, the Franklin  
11 dividends described in the IRS letter correspond to the exact number of shares he now claims he  
12 knew nothing about.

13 It was not until 2012, twenty years later, that Plaintiff alleges he first learned of his  
14 interest in any Franklin stock when Johnson contacted an acquaintance who happened to be the  
15 father-in-law of Miele’s sister, and asked about the stock. As alleged, Plaintiff then confronted  
16 Mulvihill in October 2012 and demanded that he “explain what had happened with the Franklin  
17 stock.” According to Plaintiff, Mulvihill told him that one of his business partners, John  
18 Steinbach, had “signed something” for Mulvihill, that J.P. Miele had cashed all of the dividends,  
19 and that if Miele III ever investigated the matter, an acquaintance, Robert Brennan, “would hire a  
20 Russian hit man to kill [Miele III] and your family.” Ten days after this conversation, Mulvihill  
21 died.

22 Despite Mulvihill’s admissions, Plaintiff did not sue Steinbach, Brennan, Mulvihill’s  
23 estate, or his family members, including J.P. Miele. Much to the contrary, Plaintiff then played  
24 with Steinbach in a memorial golf tournament for Mulvihill where, according to Plaintiff,  
25 Steinbach confirmed that “Mulvihill ‘got money’ for Miele III” and that, at Mulvihill’s request,  
26 “Steinbach had signed something in Miele III’s name.”

### 27 3. Legal Issues

#### 28 A. Plaintiff’s Position

1           1.       Did Johnson breach fiduciary duties he owed to Plaintiff when he provided  
2 Eugene Mulvihill, a felon convicted of multiple frauds, with information regarding Plaintiff's  
3 shares and dividends, and relied on Mulvihill to ensure Plaintiff received this property?

4           2.       Was Johnson negligent when he provided Eugene Mulvihill, a felon convicted of  
5 multiple frauds, with information regarding Plaintiff's shares and dividends, and relied on  
6 Mulvihill to ensure Plaintiff received this property?

7           3.       Did Johnson and/or Franklin fraudulently conceal information by failing to inform  
8 Plaintiff of his shares and dividends held unclaimed by BoNY, of the transfer of Plaintiff's  
9 shares and dividends, that Johnson had delegated the responsibility for delivering this property to  
10 Eugene Mulvihill, and that an investigation into these matters was conducted in 2008?

11          4.       Did Franklin wrongfully register Plaintiff's Franklin shares under Delaware Code  
12 § 8-404 when it transferred Plaintiff's shares without an endorsement or instruction from  
13 Plaintiff to do so?

14          5.       Is Franklin required to replace Plaintiff's lost, destroyed, or wrongfully take  
15 security certificates under Delaware Code § 8-405?

#### 16                   **B.       Defendants' Position**

17          1.       Whether the Amended Complaint should be dismissed for failure to adequately  
18 allege a valid, plausible and timely claim pursuant to Federal Rules of Civil Procedure 12(b)(6).

19          2.       Whether Plaintiff's counsel violated Rule 11(b) of the Federal Rules of Civil  
20 Procedure and 28 U.S.C. § 1927 by advancing frivolous legal and factual contentions and  
21 omitting known material facts in filing an Amended Complaint.

22          3.       Whether Plaintiff has standing to pursue the claims asserted in the Amended  
23 Complaint, is the legal owner of the alleged Franklin shares, is the true legal beneficiary of a  
24 valid trust, and whether other parties are required to be joined?

#### 25                   **4.       Motions**

26           The following motions have been decided and/or are pending in this case:

27                   **Title of Motion**

28                   **Status**



1	Defendants' Motion to Dismiss Complaint	Denied as moot on April 22, 2015, as
2		Plaintiff filed Amended Complaint
3	Defendants' Motion to Dismiss Amended Complaint	Pending, hearing set for July 23, 2015
4	Defendants' Motion for Sanctions under	Pending, hearing set for July 23, 2015
5	Rule 11 and 28 U.S.C. § 1927	

6           **5.       Amendment of Pleadings**

7           Plaintiff does not anticipate amending the Complaint, but reserves the right to amend the  
8 Complaint as permitted by the Court and the Federal Rules of Civil Procedure.

9           Defendants reserve their right to move to dismiss any amended pleading that is filed, as  
10 well as to file a cross-complaint in the event the Amended Complaint, or any portion thereof,  
11 survives the pending Motion to Dismiss.

12           **6.       Evidence Preservation**

13           On July 18, 2014, Plaintiff sent letters to Franklin and Johnson instructing each to  
14 preserve all evidence related to Plaintiff's claims.

15           The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
16 Stored Information. The parties certify that they have taken positive steps to preserve evidence  
17 related to the issues presented in this case.

18           **7.       Disclosures**

19           The parties have agreed to exchange Initial Disclosures in compliance with Federal Rule  
20 of Civil Procedure Rule 26 on July 16, 2015.

21           **8.       Discovery**

22                   **A.       Plaintiff's Position**

23           The parties have not yet exchanged discovery excepting Initial Disclosures pursuant to  
24 Federal Rule of Civil Procedure Rule 26. Plaintiff anticipates that initial discovery will consist  
25 of written discovery, interrogatories, requests to admit, document requests and depositions.  
26 Plaintiff believes that electronic discovery will be necessary in this matter, although Plaintiff  
27 does not believe electronic discovery will comprise a significant portion of the discovery in this  
28 action. The parties have not yet considered entering into a stipulated e-discovery order.



Plaintiff notes that Plaintiff's counsel spoke with a substantial number of witnesses in its investigation of this matter. Additionally, many of these individuals live over 100 miles from the Northern District of California. Plaintiff anticipates presenting the testimony of certain individuals through deposition. Plaintiff anticipates requiring more than ten depositions.

### **B. Defendants' Position**

Discovery should be stayed pending resolution of the pleadings. Depending on the resolution of the pending Motion to Dismiss, the legal claims and defendants at issue could be curtailed significantly. Defendants also may ask the Court to proceed with discovery in stages, including initial discovery on potentially dispositive issues.

### **9. Class Actions**

Not applicable.

### **10. Related Cases**

To the parties' knowledge, there are no related cases currently pending before any court or administrative body.

### **11. Relief**

Plaintiff has requested relief in the form of the reissuance of his shares in Franklin Resources, Inc., which currently total 2,531,250 shares. This calculation is based on stock splits which have occurred after March 4, 1991, when BoNY identified Plaintiff as the beneficial owner of 140,625 shares. In the alternative, Plaintiff has requested the present value of these shares. In addition, Plaintiff has requested the dividends which Plaintiff did not receive as a result of Defendants' actions, currently totaling \$20,583,450.01. This amount has been calculated based on the \$186,496.88 in dividends held by BoNY on March 4, 1991, as well as all additional dividends which Plaintiff should have received after that date as a result of the dividends issued by Franklin. Plaintiff also requests pre and post-judgment interest, attorneys' fees and costs, and any other relief this Court deems just and proper.

Defendants dispute that Plaintiff is entitled to any relief, including but not limited to the replacement or reissuance of Franklin shares. Defendants also seek their own relief in the

1 pending Motion for Sanctions. Defendants reserve their right to add new parties and to seek  
2 affirmative relief in a cross-complaint, following the resolution of the Motion to Dismiss.

3 **12. Settlement and ADR**

4 The parties discussed ADR during their teleconference on July 1, 2015. While both  
5 parties indicated that mediation may be appropriate, Plaintiff indicated that he was amenable to  
6 private mediation at this stage, while Defendants indicated that it was premature to schedule any  
7 mediation at this time, pending resolution of the pleadings. On July 2, 2015, the parties filed a  
8 Notice of Need for ADR Phone Conference. The parties' ADR Phone Conference is scheduled  
9 for July 20, 2015.

10 **13. Consent to Magistrate Judge for All Purposes**

11 The parties consent to a magistrate judge for all purposes, including trial and entry of  
12 judgment.

13 **14. Other References**

14 The parties do not believe that this case is suitable for reference to binding arbitration, a  
15 special master, or the Judicial Panel on Multidistrict Litigation.

16 **15. Narrowing of Issues**

17 The parties have not agreed to any stipulations at this time.

18 **16. Expedited Trial Schedule**

19 The parties do not believe this case should be handled under the Expedited Trial  
20 Procedure of General Order No. 64 Attachment A.

21 **17. Scheduling**

22 The parties believe that setting a schedule is premature at this time.

23 **18. Trial**

24 Plaintiffs ask that this case be tried to a jury. Plaintiff estimates that the trial will last  
25 approximately 10-15 days.

26 Defendants believe that it is impossible to estimate the trial length at this early stage,  
27 prior to resolution of the Motion to Dismiss. Based on the present allegations, Defendants  
28 estimate that a trial will last 3 weeks.

**19. Disclosure of Non-Party Interested Entities or Persons**

On April 13, 2015, Defendants' filed their Certification of Interested Entities or Persons, identifying only the parties as having an interest in this litigation. On July 16, 2015, Plaintiff filed his Certification of Interested Entities or Persons, identifying Veronica Miele Beard, Matthew Peter Shaw Miele, and Evelyn Shaw Miele as non-parties having an interest in this litigation.

**20. Professional Conduct**

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

**21. Other**

Plaintiff notes his concern that this Joint Case Management Statement was prepared prior to the filing of Defendants' Answer and, as a result, it is more difficult to establish which facts are disputed and where issues could possibly be narrowed.

Dated: July 16, 2015

LIDDLE & ROBINSON, L.L.P.

By: /s/ David M. Marek

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Attorneys for Defendants Charles B. Johnson  
and Franklin Resources, Inc.

**CASE MANAGEMENT ORDER**

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

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HON. LAUREL BEELER  
United States Magistrate Judge

**ECF CERTIFICATION**

I, David M. Marek, in compliance with Civil Local Rule 5-1(i)(3), hereby attest that Defendants' counsel has concurred in this filing.

Dated: July 16, 2015

LIDDLE & ROBINSON, L.L.P.

By: /s/ David M. Marek  
David M. Marek (SBN 290686)